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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,125

10/14/2005

Erwin Pasbrig

ATM-2372

1752

217 7590 04/08/2008

FISHER, CHRISTEN & SABOL
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WASHINGTON, DC 20006

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/553,125	Applicant(s) PASBRIG, ERWIN	
	Examiner WALTER B. AUGHENBAUGH	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-28 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 26-28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/14/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it is over 15 lines in length and appears to have more than 150 words. Correction is required. See MPEP § 608.01(b).

Claim Objections

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). There is no claim 25. The claims should be numbered appropriately in the next response.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 8-12, 23 and 24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationship between the base part, the cover film and the lower sealing tray, and particularly, between the base part and the lower sealing tray: it seems that these

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two claimed components are different names for the same component of the blister pack.

Furthermore, what is the “rear” of the base part? Clarification and/or correction is required.

The language of claim 8 is contradictory to the language of claim 4 (upon which claim 8 depends) and claim 1 because claim 4 is drawn to the “peelable plastics material coating” embodiment of claim 1, whereas claim 8 is drawn to a different embodiment. The embodiment recited in claim 8 cannot be present in claim 8 since a different embodiment is required in claim 4. Correction is required.

Claims 9-12 are also rejected under 35 U.S.C. 112 for the same reason as claim 8 due to the dependency of claims 9-12 upon claim 8. Claims 9-12, 23 and 24 must also be corrected due to similar inconsistencies in language (as in claim 8): “the lacquer” (claim 9), “the peelable plastics material film” (claims 10 and 11), “the plastics material coating” (claim 12: which depends upon claim 10, which requires a different embodiment from the “plastics material coating”), “the plastics material film” (claim 23) and “the protective lacquer” (claim 24).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 13, 14, 16, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hatakeyama (USPN 6,113,927).

In regard to claim 1, Hatakeyama teaches a blister pack comprising a blister base part comprising a plastics material (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-

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24, and col. 2, lines 49-62), a cover film comprising an aluminum/plastics material composite (see, for example, col. 9, lines 1-15) and a lower sealing tray comprising an aluminum/plastics material composite (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-24, col. 6, lines 36-44 and col. 2, lines 49-62) that is in contact with and/or comprises a peelable plastics film having a thickness between 10 and 40 microns (for example, sealant layer having a thickness of 30 microns, col. 9, lines 1-8).

In regard to claim 3, Hatakeyama teaches that the peelable plastics film has a thickness between 15 and 30 microns (for example, sealant layer having a thickness of 30 microns, col. 9, lines 1-8).

In regard to claim 13, Hatakeyama teaches that the peelable plastics film has a thickness between 15 and 30 microns (for example, 30 microns, col. 9, lines 1-5).

In regard to claim 14, the plastics material of the blister base part of Hatakeyama has “a barrier with a penetration barrier effect against steam and/or gases” because it is formed from a continuous film of plastics material (i.e. a film that is not perforated: any sheet of plastics material has some degree of “penetration barrier effect against steam and/or gases”).

In regard to claim 16, the aluminum/plastics material composite film comprises an aluminum film having a thickness of 20 microns and a PET film having a thickness of 12 microns (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-24, col. 6, lines 36-44 and col. 2, lines 49-62).

In regard to claim 19, Hatakeyama teaches that the peelable plastics film comprises a polyethylene (see, for example, col. 9, lines 1-13).

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In regard to claim 20, Hatakeyama teaches that the peelable plastics film is coextruded with the other layers of the laminate (see, for example, col. 9, lines 1-26).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1, 2, 4-12, 15-17, 19-24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatakeyama (USPN 6,113,927).

In regard to claims 1, 2, 16 and 28, Hatakeyama teaches a blister pack comprising a blister base part comprising a plastics material (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-24, and col. 2, lines 49-62), a cover film comprising an aluminum/plastics material composite (see, for example, col. 9, lines 1-15) and a lower sealing tray comprising an aluminum/plastics material composite (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-24, col. 6, lines 36-44 and col. 2, lines 49-62) that is in contact with and/or comprises a

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peelable heat-sealing layer (for example, sealant layer having a thickness of 30 microns, col. 9, lines 1-8, where the sealant corresponds to the claimed lacquer).

Hatakeyama fails to explicitly teach that the peelable heat-sealing layer is applied at an application weight of 2 to 20 g/m² (or 7 to 15 g/m² as claimed in claims 2 and 28, or 1 to 20 g/m² as claimed in claim 16).

However, Hatakeyama teaches that the degree of desired peelability and heat sealability should be taken in account when selecting the material of the heat sealing layer (col. 6, lines 26-35). Therefore, one of ordinary skill in the art would have recognized to have varied the thickness of the heat sealing layer in order to achieve the desired degree of peelability and heat sealability of the heat sealing layer depending on the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). MPEP 2144.05 II.B.

In regard to claims 1 and 4, Hatakeyama teaches a blister pack comprising a blister base part comprising a plastics material (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-24, and col. 2, lines 49-62), a cover film comprising an aluminum/plastics material composite (see, for example, col. 9, lines 1-15) and a lower sealing tray comprising an aluminum/plastics material composite (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-24, col. 6, lines 36-44 and col. 2, lines 49-62) that is in contact with and/or comprises a peelable plastics material coating (for example, sealant layer having a thickness of 30 microns, col. 9, lines 1-8, where the sealant corresponds to the claimed lacquer).

Hatakeyama fails to explicitly teach that the peelable plastics material coating is applied at an application weight of 5 to 40 g/m² (or 7 to 20 g/m² as claimed in claim 4).

However, Hatakeyama teaches that the degree of desired peelability and heat sealability should be taken in account when selecting the material of the peelable layer (col. 6, lines 26-35). Therefore, one of ordinary skill in the art would have recognized to have varied the thickness of the peelable layer in order to achieve the desired degree of peelability and heat sealability of the heat sealing layer depending on the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). MPEP 2144.05 II.B.

In regard to claim 5, the plastics material of the blister base part of Hatakeyama has “a barrier with a penetration barrier effect against steam and/or gases” because it is formed from a continuous film of plastics material (i.e. a film that is not perforated: any sheet of plastics material has some degree of “penetration barrier effect against steam and/or gases”).

In regard to claims 6 and 15, Hatakeyama teaches that polyvinyl chloride (PVC) and polyolefins are suitable materials for the base sheet (col. 3 lines 10-11).

In regard to claim 7, the aluminum/plastics material composite film comprises an aluminum film having a thickness of 20 microns and a PET film having a thickness of 12 microns (see, for example, col. 9, lines 1-26, col. 7, lines 6-11 and lines 17-24, col. 6, lines 36-44 and col. 2, lines 49-62).

Claims 8-12, 23 and 24 cannot be treated due to the indefiniteness of these claims. See 35 U.S.C. 112 rejection of claims 8-12, 23 and 24 made of record above in this Office Action.

In regard to claim 17, Hatakeyama teaches the blister pack as discussed above in regard to claims 1 and 2. Hatakeyama teaches the blister pack as recited in claim 17 (see, for example, col. 9, lines 1-33).

In regard to claim 19, Hatakeyama teaches the blister pack as discussed above in regard to claims 1 and 4. Hatakeyama teaches the blister pack as recited in claim 19 (see, for example, col. 9, lines 1-33).

In regard to claim 20, the peelable plastics material film of Hatakeyama is extruded (see, for example, col. 9, lines 1-33).

In regard to claim 21, Hatakeyama teaches the blister pack as discussed above in regard to claims 1, 4 and 19. Hatakeyama teaches the blister pack as recited in claim 21 (see, for example, col. 9, lines 1-33).

In regard to claims 22 and 26, Hatakeyama teaches that the aluminum foil is a barrier layer (col. 6, lines 35-44). Therefore, one of ordinary skill in the art would have recognized to have varied the thickness of the aluminum foil in order to achieve the desired degree of barrier properties depending on the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). MPEP 2144.05 II.B.

In regard to claim 27, Hatakeyama teaches the blister pack as discussed above in regard to claims 1, 3 and 16.

Hatakeyama teaches that the degree of desired peelability and heat sealability should be taken in account when selecting the material of the heat sealing layer (col. 6, lines 26-35).

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Therefore, one of ordinary skill in the art would have recognized to have varied the thickness of the heat sealing layer in order to achieve the desired degree of peelability and heat sealability of the heat sealing layer depending on the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). MPEP 2144.05 II.B.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hatakeyama (USPN 6,113,927) in view of Holbert et al. (USPN 7,192,640).

Hatakeyama teaches the blister pack as discussed above in regard to claim 17.

Hatakeyama fails to explicitly teach that the heat seal includes any of the materials recited in claim 18.

Holbert et al., however, disclose a blister package (col. 1, lines 9-14) comprising a heat seal polymer, where acrylic copolymers are suitable materials for the material of the heat seal (see, for example, col. 2, lines 59-64). Therefore, one of ordinary skill in the art would have recognized to have used an acrylic heat seal copolymer as the material of the heat seal polymer of Hatakeyama since acrylic copolymers well known to be suitable materials for the material of the heat seal of blister packages as taught by Holbert et al.

Furthermore, selection of a particular material that was known prior to the invention as the material for use in the invention has been held to be obvious. MPEP 2144.07.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used an acrylic heat seal copolymer as the material of the heat seal polymer of

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Hatakeyama since acrylic copolymers well known to be suitable materials for the material of the heat seal of blister packages as taught by Holbert et al.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /
Patent Examiner, Art Unit 1794

3/30/08